

REMARKS

Claims 1-34 are now pending in this application. Claims 1-24 are rejected. New claim 34 is added. Claims 1, 6, 10, 22-24, 31 and 33 are amended herein to clarify the invention and to address matter of form unrelated to substantive patent matters.

Applicant herein traverses and respectfully requests reconsideration of the rejection of the claims cited in the above-referenced Office Action.

Claims 1-3, 6-21 and 23 are rejected under 35 U.S.C. § 102(e) as being anticipated by Wright et al. (US 6,431,996). Applicant herein respectfully traverses these rejections. “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). It is respectfully submitted that the cited reference is deficient with regard to the following.

Independent claim 1 is amended to clarify the intended subject matter and recites in pertinent part the following:

a handling part;

an impact part which enters into dynamic

operative connection with the object;

an actuating part coupling said impact part
with said handling part; and
active elements which are each at least one of
vibration- or resonance-active, said active elements
including at least one of distinct volumetric, surface or
linear regions, which differ from at least a part of
respective surroundings thereof by at least one
parameter related to at least one of vibration or
resonance, said active elements being disposed over at
least one of the parts of the impacting instrument in a
form of at least one ordered sequence, ones of the
active elements of each of said at least one ordered
sequence being arranged according at least one
mathematically or algorithmically derived series.

The claim, as amended, recites that active elements are arranged in at least one ordered sequence according to at least one mathematically or algorithmically derived series. Applicant submits that Wright et al. fails to teach such feature. In contrast, Wright et al. reveals a system, where the impacting instrument undergoes complex measurements in order to find the locations for any stiffeners that are used to shift some nodes of selected flexural vibration modes (see, for example, col. 2,

lines 12-29). As such, the location and positioning of the stiffeners are determined and defined empirically, through experiment and measurement, and are clearly not “mathematically or algorithmically derived,” as recited in amended claim 1.

In view of the above, it is respectfully submitted that claims 1-3, 6-21 and 23 particularly describe and distinctly claim elements not disclosed in the cited reference. Therefore, reconsideration of the rejections of claims 1-3, 6-21 and 23 and their allowance are respectfully requested.

Claims 2, 4, 5, 22 and 24 are rejected as obvious over Wright et al. in view of Leon (US 5,707,302) and further in view of Yamaguchi (US 4,928,965) under 35 U.S.C. §103(a). The applicant herein respectfully traverses this rejection. For a rejection under 35 U.S.C. §103(a) to be sustained, the differences between the features of the combined references and the present invention must be obvious to one skilled in the art.

It is respectfully submitted that the proffered combination of references cannot render the rejected claims obvious because the secondary and tertiary Leon and Yamaguchi references similarly do not provide the teaching noted above with respect to the anticipation rejection that is absent from the primary Wright et al. reference. In particular, both references fail to teach or suggest active elements extending over one or more parts of the impacting instrument and which are arranged in at least one ordered sequence according to at least one mathematically or algorithmically derived series. Thus, the combination of prior art references fails to

teach or suggest all the claim limitations. Therefore, reconsideration of the rejections of claims 2, 4, 5, 22 and 24 and their allowance are respectfully requested.

Applicant notes that while claims 25-33 were added to the present application in the amendment filed on February 26, 2007, the Examiner has apparently not taken notice of these claims nor addressed the substance thereof in the final Office Action mailed April 5, 2007. They are not listed as pending claims in the Office Action Summary nor discussed in the Detailed Action.

Independent claim 31 was previously submitted as patentable over the cited art by reciting subject matter directed to at least one sequence of at least one of vibration- or resonance-relevant elements extending over at least one of various parts of an impacting instrument, wherein the at least one sequence is defined by at least one of a geometric or harmonic series which, among other features recited therein, is not believed disclosed in the cited art in the manner as claimed. Dependent claims 25-30 and 32-33 were also submitted as patentable based on the subject matter recited therein in addition to the subject matter of the claims from which they depend.

However, to the extent that the Examiner will apply Wright et al. in any new rejections directed to these claims, applicant submits the following additional remarks, as might be relevant to the rejections based on the Examiner's assertion that the claimed subject matter is alleged to be anticipated since "a harmonic series is known to be inherent in all vibrations like that shown in Wright." Applicant respectfully submits that the Examiner's reasoning is misplaced, since the claim

language is directed to relative placement of active elements, and not vibrations, in accordance with a “harmonic series,” i.e., in accordance with the ordinary accepted meaning of the claimed term, the placement of the active elements themselves are ordered as a sequence of quantities whose reciprocals form an arithmetic progression (for example, $1/2, 1/3, 1/4, \dots$). This claimed relative placement of active elements, one to the other, and which are apparently being equated with the stiffeners of Wright et al., is clearly absent from Wright et al., in which spacing or relative relation thereof is instead determined empirically, and which ultimate placement is not related by a harmonic series as defined above.

Therefore, claims 25-33 avoid rejection as being anticipated, or made obvious by Wright et al. alone, or in combination with any other art of record.

Claim 34 is added and are submitted as patentable over the cited art of record by reciting subject matter directed to active elements being arranged over at least one of the parts of an impacting instrument in the form of at least one ordered sequence creating a changed vibration spectrum which is effective for stimulating characteristic vibrations with a relatively higher frequency distribution and with attendant lower vibrational amplitudes as compared to an original vibration spectrum present in an absence of said active elements arranged in the form of said at least one ordered sequence which, among other features recited therein, is not believed disclosed in the cited art in the manner as claimed.

One (1) claim in excess of twenty is added. Accordingly, please charge the fee of \$50 to Deposit Account No. 10-1250.

A Request for Continued Examination (RCE) is being filed concurrently herewith. A Notice of Appeal was received in the United States Patent and Trademark Office on October 9, 2007.

The USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,
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